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14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16 BOARD OF TRUSTEES OF THE
17 ELECTRICAL WORKERS HEALTH AND
18 WELFARE TRUST; BOARD OF
19 TRUSTEES OF THE ELECTRICAL
20 WORKERS PENSION TRUST; AND
21 BOARD OF TRUSTEES OF THE LAS
22 VEGAS ELECTRICAL JOINT
23 APPRENTICESHIP AND TRAINING
24 TRUST FUND,

25 Case No. 2:18-cv-00758-JAD-VCF

26 **PROPOSED ORDER GRANTING
27 MOTION FOR DEFAULT JUDGMENT**

28 *ECF No. 10*

Plaintiffs,

vs.

PARSA POWER, LLC, a Nevada limited
liability company,

Defendants.

Before the Court is the Plaintiffs', Board of Trustees of the Electrical Workers Health and Welfare Trust; Board of Trustees of the Electrical Workers Pension Trust; and Board of Trustees of the Las Vegas Electrical Joint Apprenticeship and Training Trust Fund ("Trust Funds"), Motion for Default Judgment against Defendant Parsa Power, LLC ("Parsa Power"). Default having been entered against Defendant, the Court having reviewed the Plaintiffs' Motion,

1 received oral argument at the February 8, 2019, Hearing, being fully advised, and good cause
2 appearing, the Court now makes the following findings of facts and conclusions of law.

3 **I. Finding of Facts.**

4 1. Plaintiffs Boards of Trustees are fiduciaries for purposes of the Employee
5 Retirement Income Security Act of 1974 (“ERISA”).

6 2. Parsa Power, a Nevada limited liability company, acted as an employer within the
7 State of Nevada employing persons (“Covered Employees”) who perform work covered by
8 collective bargaining agreements (“CBA”) between Parsa Power and the Local Union No. 357 of
9 the International Brotherhood of Electrical Workers.

10 3. The Trust Funds are ERISA employee benefit trust funds that provide benefits to
11 Covered Employees.

12 4. The CBA incorporates by reference the Trust Agreements establishing the Trust
13 Funds (“Trust Agreements”).

14 5. Pursuant to the CBA and Trust Agreements, Parsa Power is obligated to make its
15 books and records available for a contract compliance review (“Audit”).

16 6. Despite the Trust Funds’ multiple requests, Parsa Power has failed to make its
17 books and records available for an Audit.

18 7. The Trust Funds have insufficient facts, records or information available to
19 calculate amounts due.

20 8. If an employer signatory to a CBA fails to make its books and records available for
21 an Audit, the Trust Agreements and the Trust Funds’ Collection Policy and Procedures permit the
22 Trust Funds to presume \$100,000 contributions owed annually.

23 9. The Trust Funds’ Collection Policy requires an additional \$5,000 in attorney’s fees
24 and costs in any instance where the Trust Funds seek a delinquency judgment by default
25 judgment.

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1 **II. Conclusions of Law.**

2 1. “The general rule of law is that upon default the factual allegations of the
3 complaint, except those relating to the amount of damages, will be taken as true.” *Geddes v.*
4 *United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (citing *Pope v. U.S.*, 323 U.S. 1, 12 (1944)).

5 2. The Trust Agreements and 29 U.S.C. § 1145 require each employer, including
6 Parsa Power, to submit monthly remittance reports and to make timely contributions to the Trust
7 Funds on behalf of each employee who performs work covered by the CBA.

8 3. Federal law requires Parsa Power to also keep records for the purpose of verifying
9 Trust Funds contributions. See 29 U.S.C. § 1027.

10 4. Federal Rule of Civil Procedure 55(b)(2) permits a court to grant default judgment
11 against a defendant who has failed to plead or defend an action. To determine whether a default
12 judgment is appropriate, courts may consider the following factors:

13 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
14 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
15 stake in the action; (5) the possibility of a dispute concerning material facts; (6)
16 whether the default was due to excusable neglect, and (7) the strong policy
underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

17 *Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir. 1986).

18 5. As to the first element of the *Eitel* test, the Trust Funds will suffer prejudice if
19 default judgment is not entered because they “will likely be without other recourse for recovery”
20 if default judgment is not entered in their favor.” *Tr. of the Bricklayers & Allied Craftworkers*
21 *Local 13 Defined Contribution Pension Trust for S. Nev. v. Tile Concepts, Inc.*, No. 2:16-cv-
22 01067-GMN-GWF, 2016 WL 8077987 (D. Nev. Dec. 7, 2016) (quoting *Liberty Ins.*
23 *Underwriters, Inc. v. Scudier*, 53 F. Supp. 3d 1308, 1318 (D. Nev. July 8, 2013)). The Trust
24 Funds have attempted to obtain the requested documents, however Parsa Power has refused to
25 produce them. The Trust Funds therefore have no other recourse for recovery other than these
26 proceedings, in which Parsa Power failed to participate. The first *Eitel* factor favors entry of
27 judgment.
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1 6. The second and third *Eitel* factors address the merits and sufficiency of a
2 plaintiff's claim. *Eitel*, 782 F.2d at 1471-72. The facts are undisputed facts in this case due to
3 Parsa Power's default. Parsa Power failed to meet its obligations to provide requested documents
4 and Parsa Power is therefore liable to the Trust Funds for assumed unpaid contributions, interest,
5 liquidated damages, audit fees and attorney's fees. *See* 29 U.S.C. § 1132(g)(2). The second and
6 third factors favor an entry of default judgment.

7 7. The fourth *Eitel* factor concerns the damages at stake in the case. The damages in
8 this case are reasonable and well-documented, based on the Trust Funds' governing documents
9 and 29 U.S.C. § 1132(g)(2). This factor also favors the entry of default judgment.

10 8. Regarding the fifth *Eitel* factor, there is no possibility of dispute concerning the
11 material facts. Parsa Power has had a default entered against it, the allegations in the complaint
12 are therefore deemed admitted and taken as true. *See Geddes v. United Fin. Group*, 559 F.2d
13 557, 560 (9th Cir. 1977) (citing *Pope v. U.S.*, 323 U.S. 1, 12 (1944)). Moreover, the evidence
14 shows that Parsa Power failed to provide documents as required by the Trust Funds' Trust
15 Agreements and Collection Policy. Therefore, the fifth *Eitel* factor also favors the entry of
16 default judgment.

17 9. The sixth *Eitel* factor demonstrates that excusable neglect is not a factor here. The
18 Complaint was filed on April 25, 2018. (ECF No. 1) A Summons was issued to Parsa Power on
19 April 26, 2018, and the registered agent accepted service of the Summons and Complaint on
20 May 3, 2018. (ECF Nos. 4 and 5.) Parsa Power failed to plead or otherwise defend the suit,
21 resulting in the entry of default on May 30, 2018. (ECF No.9.) Parsa Power had a month and a
22 half after it accepted service of the Summons and Complaint before the Trust Funds brought
23 their Motion for Default Judgment, but still failed to appear in these proceedings. The sixth *Eitel*
24 factor favors the entry of a default judgment.

10. The seventh and final *Eitel* factor also weighs in favor of entering default judgment. Although “should be decided on the merits whenever reasonably possible,” *Eitel*, 782 F.2d at 1472, when defendants fail to answer the complaint, a decision on the merits is “impractical, if not impossible.” *Anzalone*, 2018 WL 3004664 *7 (citing *PepsiCo v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1177 (C.D. Cal. Dec. 27, 2002)). “Thus, ‘the preference to decide a case on the merits does not preclude a court from granting default judgment.’” *PepsiCo*, 238 F. Supp.2d at 1177 (quoting *Kloepping v. Fireman’s Fund*, No. C 94-2684 TEH, 1996 WL 75314 (N.D. Cal. Feb. 13, 1996)). Here, Parsa Power’s failure to appear has made a decision on the merits impractical, if not impossible.

11. The damages set forth by the Trust Funds' and their corresponding calculations are supported by the Trust Agreements, the Trust Funds' Collection Policy, and 29 U.S.C. 1132(g)(2).

IT IS HEREBY ORDERED, ADJUDICATED AND DECREED that judgment is entered against Defendant Parsa Power, LLC, for delinquent employee benefit contributions (\$196,742), liquidated damages (\$70,726), interest (\$70,726), audit fees (\$715) and attorney's fees and costs (\$7,069) for a total of \$345,978.

(\$7,069) for a total of \$345,978.
The Motion for Default Judgment [ECF 10] is
Granted, and the
DATED this 8th day of February, 2019. Clerk of Court is directed
to enter Judgment and close this case.

UNITED STATES DISTRICT COURT JUDGE

Respectfully submitted by:

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